Postmodernism and Dworkin: The View From Half-Court

Adam Winkler* Joshua Davis†

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Abstract

The most celebrated rule in all of basketball is the Half-Court rule.
INTRODUCTION

The most celebrated rule in all of basketball is the Half-Court rule. The most celebrated issue in recent legal scholarship is interpretive theory, particularly the perspectives offered by the foremost legal philosopher in America, Ronald Dworkin, and the postmodernist critical legal scholar. Each of the interpretive theories may be illuminated by considering how they would affect adjudication in basketball relating to the Half-Court rule. This Essay undertakes this task, first examining Dworkin’s "interpretive turn," and then that of the postmodernists. For the sake of simplicity, it addresses these topics in reverse order.

In Part I of this Essay, we present the first part of our argument. In Part II, we present the next major aspect of our argument. In Part III, we include all the stuff that we thought of but which did not fit into the major parts of the argument presented in the first two parts. Finally, in the conclusion, we conclude our Essay.

* The authors thank the following people who read earlier drafts of this Essay and gave harsh criticism that made us change all the good points into bad ones while eliminating all our original and creative ideas: Duncan, Derrick, Antonis, Owen, Ronald, Stanley, Sandra, and Richard. The errors that remain are entirely their fault. Special thanks go to Melissa Bonnes and Connie Kolb for their severe emotional abuse.

Special mention goes to Bruce Ackerman, whose WE THE PEOPLE (1991), neither we nor anyone we know has actually read, despite frequent claims to the contrary.

1. "The" is a word used to mark the noun that immediately follows as definite. Its use can be witnessed in many overly important, indulgent works of philosophical or legal scholarship. See generally JOHN RAWLS, A THEORY OF JUSTICE (1971); JOHN HART ELY, DEMOCRACY AND DISTRUST (1980). But see H.L.A. HART, THE CONCEPT OF LAW (1961) (egotistically and hubristically positivist).
PART I

A. The Half-Court Rule

Before engaging the interpretive theories of law provided by Dworkin and the postmodernists, it is essential that the reader have some notion of the Half-Court rule in basketball and how it gives rise to interpretive problems. As this is the Air Jordan decade, it is safe to assume that just about everybody knows the intricacies of the Half-Court rule. For those who don’t have an intimate familiarity with basketball theory or practice, some introduction is necessary however. When a team is in the "offensive position"—i.e., with possession of the ball and looking to score a basket—it is limited in its movement by the body of rules which together are known as the Half-Court rule. (In addition, basketball has a whole host of other rules limiting offensiveness.) The Half-Court rule essentially forces the team in the offensive position to advance the ball quickly out of one half of the court into the other, and, once successful, to keep the ball there until that team loses possession or scores. If the ball crosses back over the half-court line, the offensive team loses possession.

As is readily apparent, the key to the Half-Court rule is the determination of which court the ball is in at any given moment. One factor in making this determination is visual appearance: in which court does the ball look to be in? As with any legal code, however, there are more sophisticated guidelines governing important decisions, particularly if the answer might otherwise seem obvious. Common sense can rarely be trusted with providing proper answers to complex problems of interpretation. Basketball has three main rules to determine the location of the basketball:

Rule of Backcourt Contact: The ball is in the backcourt if it is in contact with either (i) the backcourt itself, or (ii) a player located in the backcourt.

Broken Plane Rule: The ball is considered in the frontcourt "once it has broken the plane of the midcourt [i.e., half-court] line, and not in player control." The Broken Plane rule does not apply if a player has affirmative control of the basketball.

Rule of Prior Status: When the ball is not in contact with either a player or the court, it retains the same status as when it last touched a player or the court. The one exception is created by the Broken Plane rule: A ball that crosses the half-court line without any player having control over it is deemed to be in the frontcourt, even if the last player who touched it was in the backcourt, and even if the basketball itself last touched the backcourt.

9. The authors are grateful to the newspaper guy on Sixth Avenue for making this point. Actually, he said, "Kid, you look at that magazine every day and then you always put it back. When are you going to buy the thing?" But we understood what he meant.

10. The terminology is ours. Although the rules portrayed are real, their names have been changed to protect the innocent.
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3. See Nike Superstore, Chicago, Ill. (incredibly indulgent shrine to his Aimees); Wheaties' Box Cover, Safeway Supermarkets, at aisle 7 (cereals, Pop Tarts, dried pastas, and frozen halibut fillets). But see, id. at aisle 2 (non-alcoholic beer, smokeless tobacco, margarine, Egg Beaters, Equal, and decaffeinated coffee).

4. Basketball practice is from 4-7 p.m., Monday, Wednesday, and Friday. It consists of drills.

5. Obviously, we are indebted to John Rawls, whose "original position" serves as the model for the "offensive position." See RAWLS, supra note 1.

However, it is important to note that the "offensive position" has no relevance to the "positions" discussed in RICHARD POSNER, SEX AND REASON (1992).

6. A rule is not to be confused with a norm which, as a rule, presumes assumptions with sufficient regularity so as to render a rule—whether called a rule or a norm—a norm, albeit a norm of some regularity. Although the ruling norm regulating the standard of irregularities, rules are the norm, while norms cannot regularly be ruled out. This rule of norms is stated with similar persuasiveness in Antonin Scalia, The Rule of Law as a Law of Rules, 56 U. CHI. L. REV. 1175, 1066 (1989) ("Rules are good because I'm ruling.").

7. See generally The Official NBA Rules, in THE OFFICIAL NBA BASKETBALL ENCYCLOPEDIA 363-391 (Zavier Hollander & Alex Sachare eds., 1989) [hereinafter Official NBA Rules, in case anyone would have been confused].

8. Hence the strict rules prescribing "unsportsman-like conduct" (i.e., roughly fouling a player intentionally, cursing at the referees, failing to pick up a player's fallen hanky). Cf. MARTHA STEWART, COURTING SUCCESS: FATHOMABLE BEHAVIOR & A HOT GLUE GUN (1989).

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11. Official NBA Rules, supra note 7, § VI(c).
So, as you can see, figuring out the difficult question of “which half of the court is the ball in” is made simple by the Half-Court rule.

B. The Interpretive Quagmire: An Example of the Half-Court Rule In Practice

To highlight the interpretive problems posed by the Half-Court rule it will be useful to give an example of a case—a factual situation—that requires judicial resolution. Several years ago, there was an interesting case involving Minute Bowl, a 7'6" center on the Washington Bullets. It was the Big Game, the final game of the championship series, and the Bullets were leading the New York Knickerbockers by a single point with twenty seconds left to play.

The ball was inbounded to Bowl, who, as a rather tall center, had never before dribbled the ball in a professional game. Yet on that fateful day with the pressure on, Bowl began to dribble the ball towards half-court. On account of his height and inexperience, Bowl’s effort was awkward as his arms flapped about wildly and the ball bounced this way and that. To some, it even seemed that the ball was dribbling Bowl. Just before crossing the half-court line Bowl stopped his forward motion, though apparently he tried to continue dribbling the ball. After the ball bounced in the Bullets’ backcourt, it rose up, and at its apex, it crossed the plane of the half-court line, at which time Bowl’s hand reached across the line and slapped it back to the surface of the backcourt. A referee blew his whistle immediately, signaling a violation of the Half-Court rule.

As a general matter, this example demonstrates how the interplay of the Half-Court rule’s provisions makes the issue of Minute Bowl’s control determinative. If Bowl did not have control, there was a half-court violation. According to the Broken Plane rule, once an uncontrolled ball crosses the plane of the half-court line, it is in the frontcourt. Thus, when Bowl, who was touching only the backcourt, extended his long arms across the line and batted the ball back across the half-court line into the backcourt, the ball went from the backcourt to the frontcourt and back to the backcourt again. The result was a violation, the Bullets lose possession and, indeed, the whole game.

Alternatively, if Bowl did have control, there was no violation and the whistle was blown in error. Under the rule of Prior Status, a ball not in contact with a player or the court retains the same status it had when last touched by a player or the court. In this case, the ball was last touched by Bowl when he was in the backcourt, and it last touched the backcourt half.

Although the ball then crossed the plane of the half-court line, that would not matter, for it retains its prior status of being in the backcourt. When Bowl reached across the line and hit the ball back across the half-court line, he remained in the backcourt (having not been in contact with the frontcourt). The resulting dribble was therefore from the backcourt to the backcourt and no violation took place.

The resolution of this situation may seem obvious enough to the reader. Nevertheless, it can be made substantially more complicated, and thus can serve as a foil for postmodernist and Dworkinian interpretation.

PART II

A. The Postmodernist Perspective: An Exercise in Privileged Hermeneutic Strategies for a World of Closure

The veneer of neutrality that pervades and overwhelms basketball adjudication is as dense as it is resilient. Referees—judges whose striped wardrobe is intended to give the appearance of constrained imprisonment[14]—will pay nothing more than lip-service to the idea of fairness and competitive equality.

The outcome of the dispute will obviously turn instead on the subjective values of the referees. No referee can make a decision without the infiltration of values into the interpretation of the “facts,” rules, or precedents. Faith in neutral referees is a hoax[15] perpetuated by a situated elite, for whose advantage the “neutrality” works. This is the “aspiration to objectivity,” by which the normative ordering of our universe—our no[16]—is given direction and intentionality. By way of its systemic impact on our juridical framework, the aspiration of mechanical adjudication transforms our search for personal meaning through our shared “texts”—i.e., the corpus or canon of constitutive narratives of commonality.

14. For a discussion and analysis of the long cultural genealogy of symbolic body-scarring, see BERTRAND DE MORGUECQUEIRER, THE COMPLETE DETAILLED THOROUD SOCIO-CULTURAL HISTORIOGRAPHY OF CUTTING ONE’S FLESH FOR COMMUNICATIVE AND EXPRESSIVE REASONS 87-784 (Mitchell Duneier trns., 1943).
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15. Cf. PUBLIC ENEMY, 911 Is A Joke on Fear of a Black Planet (1981) [arranged by Tepper Starr].


Published by NSUWorks, 1993
Just as certainly as Milla and Treubner were destined to toil together forever in Verge’s evocative poem, the claim of neutral, objective judging is false and misleading. Every one of us, including judges, constructs our reality through our own subjective vision. Subjectivity is the lens, the object through which the subject constructs an objective construct despite the impossibility of objectivity, even subjectively, without an objectionable prior construction of how one constructs objects objectively. At least, that’s my opinion.

A fundamental contradiction underlies the sport of basketball, obscuring the process by which the referees will decide whether Minute Bowl violated the Half-Court rule. When the sport is subjected to Derridian deconstruction, there is a deep, irreconcilable, irreducible, irremediable, and irresolvable contradiction in rhetorical arguments at the base of the Half-Court rule, each argument mandating a distinct outcome. On one hand, there is the rationale of "Fair Competition," which encompasses equal opportunity and impartial dispute resolution based solely on the facts and the relevant rules. But the Fair Competition rationale is a mirage, a "disorientation" (from the Swedish-Aboriginal desuriem, meaning "to mirage," "to disorient").

This argument masks its contradictory counter-part, the opposing rhetorical argument that inevitably suppresses the impulse towards Fair Competition to the disadvantage of the exploited and the marginalized outsiders (the players and fans, respectively). This contradictory value is Entertainment for Profit. Basketball is a money game, by which entertainment disguised as competition is sold for big bucks to the ever-hungry consumer whose individuality has been turned into passivity and indifference. The result is intellectual atrophy, as the dominant power structure satiates us with the violence of a slam-dunk.

17. On deconstructionism, see Jacques Derrida, OF GRAMMATOLOGY (1974). See also every issue of the Yale Law Journal since then.
18. The capital letters used here are meant to mock the whole process of linguistic marginalization that results from the use of upper-case letters. See, Annine DeCew, THE LANGUAGE OF OPPRESSION (1982) (recognizing the relation between the use of capital letters and capitalism).
21. Incident is the French word that roughly translates into the English "incident;" however, with an additional "Je ne sais quoi," if you know what I mean. See, e.g., John Austin, HOW TO DO THINGS WITH WORDS (1962) (on "illocutionary" and "locutionary" and speech acts). But see John Searele, SPEECH ACTS (1969) (using "illocutionary" and "locutionary" but rejecting the distinction).
22. See Michael Foucault, DISCIPLINE AND PUNISH 56 (1978) ("And then I beat myself viciously about the face and neck."); LUDWIG VAN WIETENSTEIN, GESCHICHTE UND SCHRIFTZUGRUNDEN (James Zagor trans., 1982).
23. I wish to make it quite clear that I did not desire to write this. I was forced by my upbringing and society to write this sentence. If I had been only true, I would have written.
24. Malaysia's abundant natural resources are its primary attraction for tourists.
25. Unlike my esteemed brethern, I am not afraid to use capital letters. See note 18 supra. I might note that although my colleague mocks the use of such notation, he employs it in its add pomp and circumstance to his own title, viz., "The Postmodernist Perspective," as well as at the beginning of every sentence.
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without recourse to values external to the text). Of course, interpretation of a sort must always occur, and I will use the transparent terms interpretive and non-interpretive to distinguish between the two sorts of interpretation described in this paragraph.

One further discussion is necessary at the outset. In basketball, it is essential to distinguish between receipt of the ball and its reception. Receipt is the general concept of having gained control of the ball. Reception is one particular conception of the term receipt. Now, how are we to understand the concept of receipt in the context of basketball or, more precisely, in its application to the Half-Court rule, that is, what is our best conception of reception?

To decide this, we must unearth the principles that lie beneath the Half-Court rule. Here the Official NBA Rules are of some assistance. The section entitled "Guides for Administration and Application of the Rules" offers guidance in administering and applying the rules. It states:

The restrictions placed upon the [basketball] player by the rules are intended to create a balance of play, equal opportunity for the defense and offense; to provide reasonable safety and protection; and to emphasize cleverness and skill without unduly limiting freedom of action of player or team.25

Thus, the principles behind the Half-Court rule, and behind all rules of basketball, are balance, equal opportunity, safety, constrained adroitness, and unfettered locomotion.26 In deciding which of these principles will govern

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25. Official NBA Rules, supra note 7, Comments on the Rules, § I, at 387. The fact that I can refer to this section as objectively applicable underlines the assertion that a rule can never be applied neutrally. To see the potential clarity of a linguistic reference, consider the following two lines of text:

that
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Notice that that that is on the first line precedes that that that is on the second line. If I were to say, "Please point to that that that that that that, you would be forced to point to the second line. Alternatively, if I were to inform you that that that that that that follows is green, you would know with certainty that that that that is on the first line is green. My partner would deny the possibility of such a clear and objective interpretation.

26. My colleague would have you believe that these principles are a mere facade, and that I merely think these principles undergird the rules of basketball. But what could that mean? I might as easily respond that he merely thinks that they are a facade. Of course, he thinks that, otherwise he wouldn't have said it—unless he is lying, which he sometimes is—but he doesn't merely think it. Rather, he thinks that it is true. If it is true then he is right, otherwise he is wrong. Of course, I merely think all this, but I think it because it is true, which it is, and so I'm right to do so.

27. I alternately the gender of my pronouns throughout the argument to reflect the proportion of men and women in society. I would, ideally, use a female pronoun 51% of the time and a male pronoun 49% of the time, but I have not employed pronouns frequently enough to accomplish this goal, although, in pursuit of it, I have used pronouns where I normally would not have done so.

Although there are far fewer men and women than inanimate objects, I will not use the imperative "it," except when referring to players on the Detroit Pistons.

28. To understand this claim, imagine a rainy Sunday afternoon in a British country home. There is nothing to do but play a game in which each person writes a chapter in a chain novel. I don't know about you, but I'd bloody well shoot myself.

29. See Official NBA Rules, supra note 7, Comments on the Rules, § I, at 387 ("Each official should have a definite and clear conception—as opposed to concept—of his overall responsibility to include the intent and purpose of each rule. If all officials possess the same conception—based on the same concept—there will be a guaranteed uniformity in the administration of all contests."). And emphasis added.

30. Of course, I rely here on Dworkin's notion of integrity. See RONALD DWORKIN, LAW'S EMPIRE (1986). For an alternative approach, defining integrity as "returning one's library books on time," see MYRTLE ALGERSTEIN, LIBRARIAN'S EMPIRE 24 (1977).
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The principle of constrained adroitness would require that Bowi's dribbling be considered a violation of the Half-Court rule. Bowl clearly is not adroit at dribbling. I imagine him flapping his arms wildly—a veritable fish out of water—travelling ineptly to shepherd the ball along. The rules are designed so that the game will not be delayed by clumsiness of this sort. He caused the ball to pass unnecessarily from the backcourt to the frontcourt and back to the backcourt again. Therefore, his team should be deprived of the ball.

Alternatively, the principle of unfettered locomotion would allow players to succeed in the game of basketball on their own terms. Let them be as creative as they wish. If rules barring awkwardness encumber the players' freedom, alternative avenues for expressing skill will be sealed shut, openings will be silenced, so that the game will never progress. This is all the more troubling because the more unique a skill, the more an untrained audience will be blind to its innovative and subtle tones.

Our ruling must balance these conflicting assessments in an ideal mixture. In this case, the resolution is particularly easy. The principle of constrained adroitness militates in favor of sanctioning Bowl's clumsiness. His actions violated the heart of that principle. In contrast, the principle of freedom of movement only tangentially supports Bowl's actions. He was not developing a novel skill, but rather doing aesthetic violence to one that is well-established. Our answer is precise and determinate.

PART III

Because we were clever enough to fit everything we had to say into Parts I and II, we do not need to include a Part III. Our claims in the Introduction notwithstanding, we have finished ahead of schedule, as it were, and are ready to conclude.

31. To anticipate a criticism, let me say that if the case were not easily resolved, that does not mean that analysis of it would be subjective. A problem may be difficult and yet have a single determinate, and therefore objective, answer. This is true of many difficult mathematical problems. Consider, for example, the following equation: 2 + (4 - 6 + 123,456) - 999. See?

http://nsuworks.nova.edu/nlr/vol17/iss2/17
The principle of constrained adroitness would require that Bow's dribbling be considered a violation of the Half-Court rule. Bow clearly is not adroit at dribbling. I imagine him flapping his arms wildly—a veritable fish out of water—trying ineptly to shepherd the ball along. The rules are designed so that the game will not be delayed by clumsiness of this sort. He caused the ball to pass unnecessarily from the backcourt to the frontcourt and back to the backcourt again. Therefore, his team should be deprived of the ball.

Alternatively, the principle of unfettered locomotion would allow players to succeed in the game of basketball on their own terms. Let them be as creative as they wish. If rules barring awkwardness encumber the players' freedom, alternative avenues for expressing skill will be sealed shut, openings will be silenced, so that the game will never progress. This is all the more troubling because the more unique a skill, the more an untrained audience will be blind to its innovative and subtle aspects.

Our ruling must balance these conflicting assessments in an ideal mixture. In this case, the resolution is particularly easy. The principle of constrained adroitness militates in favor of sanctioning Bow's clumsiness. His actions violated the heart of that principle. In contrast, the principle of freedom of movement only tangentially supports Bow's actions. He was not developing a novel skill, but rather doing aesthetic violence to one that is well-established. Our answer is precise and determinate.

PART III

Because we were clever enough to fit everything we had to say into Parts I and II, we do not need to include a Part III. Our claims in the Introduction notwithstanding, we have finished ahead of schedule, as it were, and are ready to conclude.

31. To anticipate a criticism, let me say that if the case were not easily resolved, the does not mean that analysis of it would be subjective. A problem may be difficult and yet have a single determinate, and therefore objective, answer. This is true of many difficult mathematical problems. Considering, for example, the following equation: $2 \times (4 - 8 \times 123,456) = 999,999?$. 

CONCLUSION

In the introduction we introduced the topic, viz., the troubling interpretive questions raised by the Half-Court rule. In Part I, we established the foundation for discussing the topic. In Part II, we presented two perspectives on the topic, making relatively clear claims seem much more intellectually demanding than necessary. Part III turned out to be superficial. In this conclusion, we have summarized the argument and, now, the conclusion, too.